

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JESSE S.,

Claimant,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2004060697

DECISION

This matter was assigned to Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, for a decision based upon stipulated facts and written briefs.

Claimant was represented by Michael A. Zatopa, Attorney at Law.

The service agency was represented by Rufus L. Cole, Attorney at Law.

Claimant's opening brief and the parties' "Joint Statement of Undisputed Facts" were received on May 12, 2006. The service agency's responsive brief was received on June 2, 2006. Claimant's reply brief was received on June 9, 2006.

On June 14, 2006, the parties notified the administrative law judge that they waived oral argument. The matter was thereupon deemed submitted for decision.

ISSUE

The sole issue is whether the service agency breached an interim mediation agreement reached by the parties on July 22, 2004. The parties agree that if no breach is found, this decision will be dispositive of the matter and no further proceedings will occur, and that if a breach is found, the service agency will reconvene an IPP meeting to determine the remedy,

with claimant having the right to an evidentiary hearing if he is unsatisfied with the remedy determined by the team.

FACTUAL FINDINGS

Factual and Procedural Background

1. Claimant is a 15-year-old boy who is eligible for regional center services based on a diagnosis of mild mental retardation. In February 2004, claimant's mother met informally with the service agency to discuss the need for a residential placement for claimant. The service agency informed claimant's mother that she should discuss claimant's issues with the San Francisco Unified School District. The service agency also informed claimant's mother that it would not fund any portion of a residential placement for claimant. On June 10, 2004, claimant's mother filed a request for hearing on her son's behalf.

2. Thereafter, the parties engaged in mediation and, on July 22, 2004, entered into an "Interim Mediation Agreement." In its entirety, this agreement provides:

The parties have not resolved all differences concerning the Consumer's service needs and have agreed to meet again in Mediation by September 1 by phone. By doing so, the petitioner (consumer): ___ will ___ will not waive the timelines for holding the hearing and issuing a final hearing decision. [Neither option was checked.] The Mediator retains jurisdiction of the case. The parties have reached an Interim Agreement as follows:

- 1) Parties agree to pursue a process to consider current needs & residential placement as follows:
 - a) Parent talks with case worker about services for the moment.
 - b) Clinical team reviews reports and assessments.
 - c) IPP team convenes in August to determine level of residential care needed.
 - d) Search occurs for placements locally and within the state. This includes packets being sent out and parent visitation.
 - e) IPP team reconvenes to discuss placement. If no CA placement can be available to meet [claimant's] needs, out-of-state placement may be considered. Such a placement would require the approval of Department of Developmental Services.

3. On August 30, 2004, the service agency convened an interdisciplinary (ID) team consisting of a social worker, a physician, and a psychologist to determine the

appropriate level of care based on claimant's out-of-home placement needs. The team recommended a Level 2¹ placement as the appropriate level of care.

4. The service agency does not provide Level 2 placements for minors. Children placed out of the home by the service agency require either Level 4 or Intermediate Care Facility services. Children requiring those services have severe behavioral or medical problems that claimant does not have.

5. During the August 30, 2004 meeting, claimant's mother advised the team that she planned to enroll her son at Riverview School in Massachusetts. Claimant's mother completed the enrollment process for the school on or about September 13, 2004. At the time she did so, claimant's mother had not obtained approval for claimant's enrollment from either the San Francisco Unified School District or the service agency.

6. Between August 30, 2004, and approximately October 22, 2004, the service agency searched for a Level 2 home throughout California. No Level 2 residential facility was found. The service agency learned that the absence of such facilities was due to the fact that children with this level of need are typically supported in the family home, not in out-of-home placement.

7. On or about October 22, 2004, the service agency wrote to the mediator, advising her of the matters set forth in Finding 6 and requesting further instruction with regard to the mediation process. No response was received.

8. Claimant has remained enrolled at Riverview School since September 13, 2004. Neither the San Francisco Unified School District nor the service agency has ever consented to this enrollment. Both the school district and the service agency deny that residential placement is appropriate for claimant.

9. The Department of Developmental Services must consent before an out-of-state residential placement may be approved by the service agency. This information had been provided to claimant's mother before she enrolled her son at Riverview School. Because the service agency contends claimant does not require out-of-home placement, it has not requested approval for out-of-state placement from the department.

10. On October 22, 2004, the service agency notified claimant's mother that it would not perform any further search for residential placement for claimant. On or about November 22, 2004, claimant's mother filed a fair hearing request challenging this decision.

¹ A Level 2 facility is a Community Care Facility licensed by the Department of Social Services that, with a basic staffing level of at least one direct care staff person for each six consumers, provides care, supervision, and incidental training for persons with some self-care skills and no major behavior problems. (Cal. Code Regs., tit. 17, § 56004, subd. (c)(2)(A); Department of Developmental Services' website at <http://www.dds.ca.gov/livingarrang/ccf.cfm>.)

On February 9, 2005, claimant's mother sought to amend this request to include a claim that the service agency had failed to comply with the July 22, 2004 interim mediation agreement and a request that the service agency fund the room and board portion of claimant's residential placement at Riverview School "as a remedy for [the service agency's] failure to honor the mediation agreement. . . ."

11. At the parties' request, the matter did not proceed to hearing pending their discussions. On February 21, 2006, the parties notified the Office of Administrative Hearings that they had reached a stipulated set of facts and would be prepared to submit the matter for a decision based upon those facts and the parties' briefs. On March 9, 2006, the parties agreed that the only issue to be decided was whether there had been a breach of the interim mediation agreement; that the only remedy sought for such a breach would be a reconvened ID team meeting to determine a remedy, with claimant having the right to request a fair hearing if unsatisfied with the ID team's determination; and that a finding of no breach would result in dismissal.

Parties' Contentions

12. In his opening brief, claimant contends that the service agency's refusal to continue to search for, find, and fund a residential placement for claimant constitutes a breach of the interim mediation agreement. In particular, claimant contends that paragraphs 1(c) and 1(d) of the interim mediation agreement require the service agency to "obtain a residential placement" for him. The agreement, he maintains, "require[s] a residential placement." Claimant asserts the breach arose because the service agency has a policy not to provide Level 2 residential services, that this policy is in violation of the Lanterman Act, and that actions in violation of the Act must be set aside. Claimant seeks findings that the service agency's policy is in violation of the Act and that the service agency "has breached the relevant mediation agreement and subsequent IPP requiring residential placement."

13. In its responsive brief, the service agency contends it never agreed that residential placement is appropriate for claimant. It argues that the mediation constituted an attempt to resolve the parties' dispute over whether an out-of-home placement was required for claimant; that the interim mediation agreement simply established a "process" for gathering information relevant to claimant's request for residential placement; and that the mediation was to reconvene in September 2004 after this information was obtained. The service agency maintains that by enrolling her son in Riverview School claimant's mother abandoned the mediation before the parties could reach a final resolution. Finally, the service agency argues that two of the findings claimant requests – that a service agency policy is in violation of the Lanterman Act and that the service agency "has breached the . . . IPP requiring residential placement" – are beyond the scope of the sole issue in this proceeding: whether the interim mediation agreement was breached.

14. In his reply brief, claimant argues that the interim mediation agreement “is unequivocal that the claimant is entitled to residential placement. The [a]greement refers only to the fact of ‘residential placement’ and ‘residential care.’ Contrary to the argument of the [service agency], the ‘process’ referred to in the [a]greement is the process of implementing the details of residential placement.”

LEGAL CONCLUSIONS

1. The parties’ dispute turns upon an interpretation of the language of the interim mediation agreement. Claimant maintains the agreement required the service agency to obtain a residential placement for him while the service agency maintains the agreement simply established a process for gathering information about a potential placement. Interpreting the language of the interim agreement is akin to interpreting the language of a contract. The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code, § 1636.) Where the language of a contract is clear and explicit and does not lead to an absurd result, the intention of the parties is determined from the language of the document itself. (Civ. Code, §§ 1638 & 1639.)

2. In this case, the language of the agreement is not ambiguous. Paragraph 1 of the interim agreement² is, in effect, the real operative portion of the agreement. It provides that the “[p]arties agree to pursue a process to consider current needs and residential placement as follows.” There then follow five lettered paragraphs setting forth the steps in agreed-upon process. Paragraph 1(c) provides that an ID team (referred to in the agreement as an “IPP team”) is to meet “to determine level of residential care needed.” Paragraph 1(d) next provides that a “search occurs for placements locally and within the state.” The final step, in paragraph 1(e), provides that the ID team is to reconvene to discuss placement.

3. The service agency’s view of the interim mediation agreement comports with the agreement’s terms: the service agency committed itself only to a “process” that could lead to, but did not require, residential placement. Nothing in the agreement’s explicit terms requires the service agency to obtain a residential placement for claimant. Paragraphs 1(c) and 1(d) require the service agency to determine what level of residential care might be needed and, once a need was determined, to search for a placement locally and within the state.

The parties’ agreed-upon facts show that the ID team determined that a Level 2 placement would be the appropriate level for claimant and that the service agency thereupon commenced a statewide search for a Level 2 residential facility. None was found, since children requiring this level of service are generally served at home. Thus, the service agency met its obligations under the third and fourth steps of the “process to consider current needs and residential placement.” The fifth step of the process, reconvening of the ID team “to

² This is the only numbered paragraph in the agreement.

discuss placement,” never occurred. The service agency informed the mediator that it would not recommend an out-of-home placement for claimant based upon his level of need and the fact his mother had placed him in an out-of-state facility. It requested a recommendation from the mediator on how to proceed but received no response.

3. The service agency has done all that was required of it up through the fourth step of the agreed-upon process. The fifth step never took place. Whether that was the fault of claimant, the service agency, or the mediator is irrelevant. That step required only that the ID team “discuss placement.” The terms of the agreement did not *require* placement and claimant’s contention that the agreed-upon “process” was one “implementing the details of residential placement” is not supported by the agreement.

4. Claimant’s requests for findings that the service agency has a policy relating to Level 2 residential placements that is in violation of the Lanterman Act, and that the service agency “breached the . . . IPP requiring residential placement,” are beyond the agreed scope of this proceeding.

ORDER

Claimant’s appeal is denied. The service agency did not breach the interim mediation agreement.

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: _____

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings